



# County of Los Angeles CHIEF EXECUTIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION  
LOS ANGELES, CALIFORNIA 90012  
(213) 974-1101  
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA  
Chief Executive Officer

October 16, 2007

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**AMENDMENT NO. 1 TO CONCESSION AGREEMENT NO. 74188 FOR  
OPERATION OF A SOD FARM AT PETER J. PITCHESS DETENTION CENTER  
(FIFTH DISTRICT) (4 VOTES)**

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Approve and instruct the Chairman to sign Amendment No. 1 to Concession Agreement No. 74188.
2. Find that the Board previously considered and adopted a Negative Declaration prepared by the Chief Executive Office (CEO) concluding that the proposed concession will have no significant effect on the environment.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The purpose of the recommended action is to amend the existing Concession Agreement in order to extend its term, reduce the amount of acreage from 330 to 222, and restructure the use fee provision to enable the operator, Summit Farms, LLC (SFL) to recover from operational losses stemming from causes beyond its control, and allow for payment to the County of use fees currently in arrears.

On October 22, 2002, your Board approved a Concession Agreement (Concession Agreement) for the operation of a sod farm between the County of Los Angeles (County) and SFL, at the Peter J. Pitchess Detention Center (Pitchess) in Castaic. SFL was the only respondent to a Request for Proposals (RFP) issued by the County and was granted a three-year contract with two, one-year options to extend, for the purpose of developing a sod farm on approximately 330 acres of unimproved and underutilized property lying along Castaic Creek within the Pitchess facility.

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

Operations began in January 2003 after SFL spent approximately \$2 million in land preparation and equipment. However, soon thereafter, a number of unanticipated problems arose due to large amounts of rock discovered under the top soil, which needed to be removed prior to seeding. Despite these difficulties and additional expenses incurred, SFL continued its operations and sod production began a few months later, enabling SFL to achieve its first product sales in May 2003.

In the winter of 2004, the County experienced a 100-year storm that caused considerable damage to County roads and other infrastructure in the Castaic area. The aftermath of the storm resulted in a complete loss of sod crops for SFL, which led to an operational shut down.

The terms of the Concession Agreement, however, required SFL to pay the County an annual fee based upon the greater of \$1,000 per acre used or 7.5% of gross sales. The Concession Agreement does not contain any provision for abatement of fees due to crop losses. Following the 2004 storm, SFL notified the County that the crop damage had resulted in a loss of \$300,000 and that SFL was therefore unable to pay a portion of the annual fee amounting to \$56,545. Further, SFL advised that after a thorough examination of the 330 acres under contract, only 222 acres were deemed feasible for farming. In addition, at the end of 2006, SFL terminated its relationship with its operator, Turf Grass America, and has been unsuccessful in securing another operator due to the short time remaining under the current Concession Agreement. As a result of SFL's sod farming inactivity, it is projected that the fee payments in arrears, as of the end of the 2007 calendar year, will total approximately \$278,000.

The fee structure imposed by the County in the current Concession Agreement was based on revenue projections that have proven to be overly optimistic when compared to actual production numbers. For instance, the \$1,000 per acre farmed (soil in use), originally intended as a minimum fee, has throughout the term of the Concession Agreement exceeded 7.5% of the gross revenue generated. Further, there was an expectation that a higher percentage of the 330 acres under contract would be farmable. In actuality only 222 acres are suitable for sod farming.

Nonetheless, despite the operational and financial problems encountered by SFL, the County has received \$385,174 in revenue from property that would otherwise have remained idle and unproductive. SFL is still committed to making an additional and significant investment to the property (estimated at \$900,000) in order to resume sod farm operations under a re-structured Concession Agreement.

The key elements of the proposed amendment include, (i) an extension of the term for 5 years with two one-year options, (ii) a reduction of the total acreage from 330 to 222,

(iii) use fees to be based on the greater of 7.5% of gross receipts or \$3,000 per month and the elimination of the \$1,000 per acre minimum fee, and (iv) an additional fee of 2% of gross receipts earmarked for repayment of the \$278,000 in use fees in arrears which will be paid over the five-year term extension.

#### Implementation of Strategic Plan Goals

The use of County property for sod farming is consistent with the County's Strategic Plan of service excellence and fiscal responsibility (Goals 1 and 4) by increasing public/private partnerships and effectively managing County resources.

#### FISCAL IMPACT/FINANCING

SFL will pay a monthly fee based upon 7.5% of gross revenue or \$3,000 and an additional 2% of gross revenue as repayment for the outstanding debt owed to the County.

#### **5-year Projection**

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Gross Sales	\$1,270,000	\$2,271,000	\$2,839,000	\$3,256,000	\$4,264,000	\$13,900,000
7.5%fee	\$95,250	\$170,325	\$212,925	\$244,200	\$319,800	\$1,042,500
2% fee	\$25,400	\$45,420	\$56,780	\$65,120	\$85,280	\$278,000

The County is projected to receive \$1,042,500 by the end of 5 years, plus repayment of the \$278,000 debt.

#### FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The proposed Amendment No. 1 to the Concession Agreement will reduce the premises under contract from 330 acres to 222 acres. The term of the Concession Agreement will be extended an additional five years with two one-year options. The annual fee payment will be eliminated and the fees will be paid monthly based upon the greater of 7.5% of gross revenue or \$3,000 per month. An additional monthly payment of 2% of gross revenue will be paid against the outstanding debt of \$278,000. The sale of ancillary products such as mulch and gravel will also be allowed on the premises. County Counsel has approved the proposed amendment as to form and the Sheriff's Department concurs with the continuation of the sod farm operations.

**ENVIRONMENTAL DOCUMENTATION**

The CEO prepared a Negative Declaration which was considered and adopted by your Board on October 22, 2002, and which found that this project does not have a significant effect on the environment.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

It is anticipated that the proposed amendment will have no impact on the Pitchess facility Detention Center operations as SFL, under the current Concession Agreement, will continue to comply with all rules and regulations of the Sheriff's Department. The Sheriff's Department has no objections to the continued operation of the sod farm.

**CONCLUSION**

It is requested that the Executive Officer, Board of Supervisors, return two original copies of the executed amendment and two copies of the minute order, and the adopted, stamped Board letter to the CEO, Real Estate Division, 222 South Hill Street, 4<sup>th</sup> Floor, Los Angeles, CA 90012 for further processing.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:DL  
JSE:AA:dd

Attachments (1)

c: County Counsel  
Sheriff's Department  
Auditor-Controller

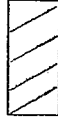
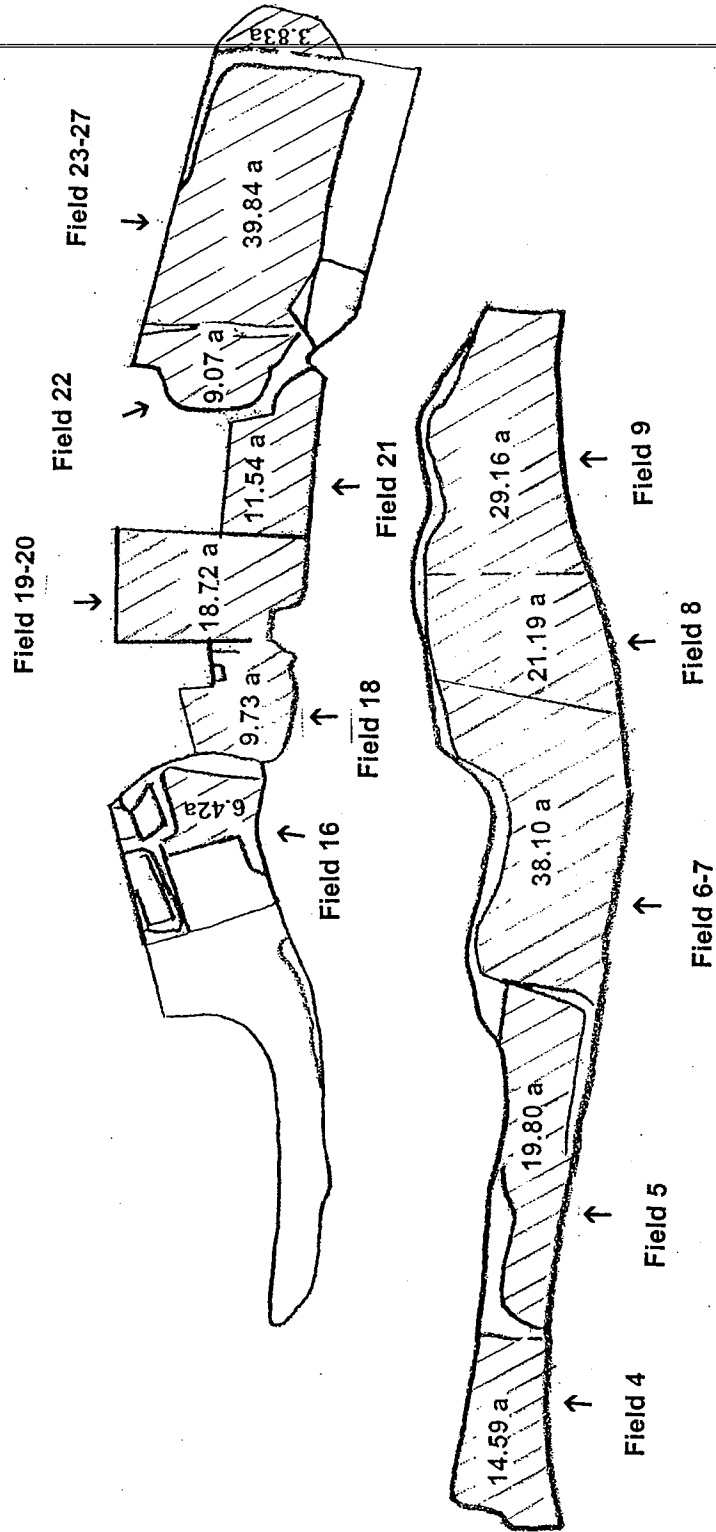
SODFarm.bl

EXHIBIT A

SUMMIT FARMS LLC PREMISES UNDER CONTRACT

PETER J. PITCHESS DETENTION CENTER, CASTAIC, CALIFORNIA

222 ACRES



SUBJECT AREA

NOT TO SCALE

## AMENDMENT NO. 1 TO CONCESSION AGREEMENT

This **AMENDMENT No. 1** (the "Amendment") is made and entered into this \_\_\_\_ day of  
2007

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**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**, a Body  
Corporate and Politic, hereinafter  
referred to as "County,"

**AND**

**SUMMIT FARMS LLC**, a California  
Limited Liability Company, hereinafter  
referred to as "Concessionaire"

### RECITALS:

County and Concessionaire entered into a Concession Agreement dated October 22, 2002 (the "Agreement") for the development and operation of a sod farm; and

During the course of sod farm operations, Concessionaire has encountered unexpected site conditions of limited farmable acreage, extensive soil repair and severe storm damage resulting in substantial financial losses; and

Concessionaire has requested the term of the Agreement be extended and certain conditions of the Agreement be amended; and

Amending the Agreement will allow Concessionaire to continue operations, recoup some of the losses, and repay debts to the County; and

Concessionaire has determined that of the approximately 330 acres described in the Agreement, only 222 are feasible for sod farming;

**NOW THEREFORE**, in consideration of the foregoing, the parties agree to amend the Agreement as follows:

1. Section A of the Agreement (Premises) is hereby deleted and the following is inserted in substitution thereof:

County is owner of the following described agricultural lands, being part of its ranch commonly known Peter J. Pitchess Detention Center, 29330 The Old Road, Castaic, CA 91384, and shown on Exhibit A attached hereto and incorporated herein by this reference. The area described in Exhibit A is approximately 222 acres within the Peter J. Pitchess Detention Center and is referred to hereinafter as the "Premises."

2. Section B2 of the Agreement (Fee) is hereby deleted and the following is inserted in substitution thereof:

The fee payable by Concessionaire to County for the use and occupation of the Premises shall be seven and one half percent (7.5%) of monthly gross sales, or \$3,000 per month, which ever is greater.

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Concessionaire has an indebtedness to the County under this Agreement in the amount of \$278,000 (the "Debt"). In order to repay the County, Concessionaire, in addition to the seven and one half percent (7.5%) fee shall pay monthly an additional two percent (2%) of monthly gross sales. Said 2% payments shall continue until the amount of \$278,000 is paid in full. If the Debt has not been repaid in full at the time this Agreement terminates, Concessionaire shall repay the remainder of the Debt in a lump sum upon such termination.

Payment of all monthly fees shall be made by check or draft issued and payable to the County of Los Angeles on or before the 20<sup>th</sup> day of the calendar month herein. Payment shall be mailed or otherwise delivered to the County of Los Angeles, Auditor-Controller, Administrative Services, Room 410, 500 West Temple Street, Los Angeles, CA 90012, Attention: Franchise/Concessions Section.

If any monthly payment is received more than ten (10) days late, a late fee of 3% of such late monthly payment will be charged. Any late payment charge shall be due and payable within the next rental period. County shall not be obligated at any time to notify Concessionaire of late payment charges or accumulation thereof.

If during the term of this Agreement, Concessionaire encounters damages due to catastrophic events such as severe weather conditions or other perils causing partial or complete loss of sod crops, Concessionaire shall document the extent and duration of the damage and corresponding loss of sod. Concessionaire shall prepare a damage report estimating the gross sales loss with respect to the overall monthly fees owed to the County. The Chief Executive Office (CEO) will review said report and if it determines, in its sole discretion, that there is adequate documentation of loss of gross sales due to catastrophic events, the CEO may provide relief to Concessionaire from fees owed to the County in proportion to the amount of the loss.

3. Section B3 of the Agreement (Accounting Records) is hereby deleted and the following is inserted in substitution thereof:

Concessionaire shall be required to maintain a method of accounting which shall, to the satisfaction of the County's Auditor-Controller, correctly and accurately reflect the gross income and disbursements of Concessionaire in connection with the Concession. The method of accounting, including bank accounts established for the concession, shall be separate from the accounting system used for any other business operated by Concessionaire or for recording Concessionaire's personal financial affairs. Such method shall include the keeping of the following documents:

- a. Regular books of accounting general ledgers.
- b. Journals, including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.
- c. ~~State and Federal income tax returns and sales tax returns and~~ checks and other documents providing payment of sums shown which shall be kept in confidence by the County.
- d. Cash register tapes (daily tapes may be separated but shall be retained so that from day-to-day the sales can be identified).
- e. Any other accounting records that the Auditor-Controller deems necessary for proper reporting of receipts.

All documents, books, and accounting records shall be open for inspection at any reasonable time during the term of this Agreement. In addition, the Auditor-Controller may from time to time during the term hereof conduct an audit and re-audit of the books and business conducted by Concessionaire and observe the operation of business so that accuracy of the above records can be confirmed. If the report of gross sales made by the Concessionaire to the Auditor-Controller should be found to be less than the amount of the gross sales disclosed by such audit and observation, Concessionaire shall pay the delinquent amount within 30 days of billing thereof. If the additional amount due exceeds 2 percent of the actual monthly gross sales and there is no reasonable basis, in County's sole determination, for the failure to report and pay such delinquent amount, Concessionaire shall also pay the cost of the audit and the late charges provided herein for delinquent payments.

All information obtained in connection with the Auditor-Controller's inspection of records or audit shall be treated as confidential information and exempt from public disclosure. Notwithstanding the foregoing, County shall not be liable or responsible for the disclosure of any such records, including without limitation those marked trade secret, confidential or proprietary, if such disclosure is deemed to be required by law or an order of Court.

All such accounting records, including but not limited to, all financial records, journals, vouchers, checks, State and Federal income tax returns, cash registrar tapes, proprietary data and information, shall be kept and maintained by Concessionaire and shall be made available to County during the term of this Agreement and for a period of four years thereafter unless County's written permission is given to dispose of any such material prior to such time. If such material shall be maintained by Concessionaire at a location outside Los Angeles County, then, at County's option, Concessionaire shall pay County for travel, per diem, and other costs incurred by County to examine, audit, excerpt, copy or transcribe such material at such other location.



4. The following provision shall be added to Section B5 of the Agreement (Term of this Agreement):

Extension Term:

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The term of this Agreement shall be extended for an additional 5 years commencing upon execution of this Amendment by the Board of Supervisors and terminating 5 years thereafter. Notwithstanding the foregoing, in the event Concessionaire fails to begin farming operations at the Premises by April 30, 2008, this Agreement shall automatically terminate and expire and upon expiration Concessionaire shall vacate the Premises and remove all improvements in accordance with Paragraph 12 hereof.

Upon request by Concessionaire, County at its sole discretion, may grant two one-year extensions under the terms and conditions of this Agreement. In order to exercise each one-year extension, Concessionaire shall notify County in writing 90 days prior to the expiration of the primary 5-year term and/or extension period. County's agreement to grant each extension shall be provided by CEO, and CEO's failure to respond to such notification within 30 days shall be deemed agreement.

5. Paragraph 2 of Section 7 shall be deleted and replaced with the following:

The Premises is for the specified use of sod farming, sod sales and the production and/or sale of sod-related products. The Concessionaire will comply with all requirements of law and governmental regulations applicable thereto. Concessionaire shall not use, or permit to be used, any part of the Premises for any purpose other than the specified purpose.

6. All undefined terms when used herein shall have the same respective meanings as are given under the Agreement unless expressly provided otherwise in this Amendment.
7. Each of the signatories for the Agreement personally covenant, warrant and guarantee that each of them, jointly and severally, have the power and authority to execute this Amendment upon the terms and conditions stated herein and each agrees to indemnify and hold harmless the County from all damages, costs, and expenses, which result from a breach of this representation.
8. In the event of a conflict between the terms and conditions of this Amendment and the terms and conditions of the Agreement, the terms and conditions of this Amendment shall prevail. All other terms and conditions contained in the Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be subscribed by its Chairman and Concessionaire has caused this Amendment to be subscribed in its behalf by its duly authorized officer, the day, month and year first above written.

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**ATTEST:**

SACHI A. HAMAI  
Executive Officer, Board of Supervisors

COUNTY OF LOS ANGELES

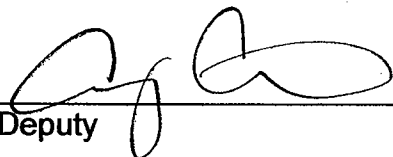
By \_\_\_\_\_  
Deputy

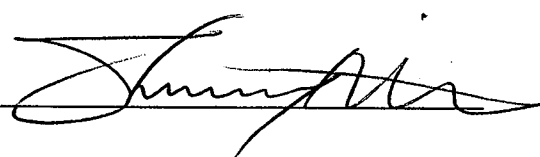
By \_\_\_\_\_  
Chairman, Board of Supervisors

**APPROVED AS TO FORM:**

RAYMOND G. FORTNER, JR.  
County Counsel

SUMMIT FARMS LLC

By  \_\_\_\_\_  
Deputy

By  \_\_\_\_\_

SHERY YI  
Printed Name

Title Managing member

SummitFarms.Amendment.agreement

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA

COUNTY OF

Los Angeles } SS

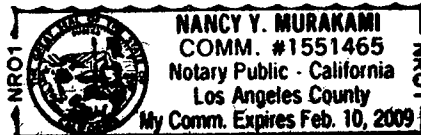
On 9/25/07 before me, NANCY Y. MURAKAMI

personally appeared SHERRY YI

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



This area for official notarial seal.

### OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) other than named above \_\_\_\_\_

### CAPACITY(IES) CLAIMED BY SIGNER(S)

☐ INDIVIDUAL

☐ CORPORATE OFFICER(S)  
TITLE(S) \_\_\_\_\_

☐ PARTNER(S)- ☐ LIMITED  
☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN OR CONSERVATOR

☐ OTHER \_\_\_\_\_

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of Signer

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☐ INDIVIDUAL

☐ CORPORATE OFFICER(S)  
TITLE(S) \_\_\_\_\_

☐ PARTNER(S)- ☐ LIMITED  
☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN OR CONSERVATOR

☐ OTHER \_\_\_\_\_

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of Signer

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SIGNER IS REPRESENTING:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_